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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,782	07/09/2003	Hugh H. Trout III	23660-00654	8569
25243 7590 12/31/2007 KELLEY DRYE & WARREN LLP 3050 K STREET, NW SUITE 400 WASHINGTON, DC 20007			EXAMINER EREZO, DARWIN P	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/614,782

**Applicant(s)**

TROUT, HUGH H.

**Examiner**

Darwin P. Erezzo

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-8,10-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-8,10-13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/14/07 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1,3,5,6,8,10,11,13,15,16,18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,508,252 to Berg et al.

As to claims 1,3,5,6,8,10,11,13,15,16, and 19, Berg discloses a delivery apparatus comprising:

-a flexible catheter **200** having an outer catheter **208** and an inner catheter **206** that is movable within the outer catheter (see Figs. 3-8), the inner catheter is adapted to bend along with the outer catheter (in col. 6, ll. 50-56, Berg incorporates by reference

the catheter of application 09/187,364, now US patent 6,475,222, which discloses a catheter that is capable of assuming an angular configuration, as cited in col. 4, ll. 48-50);

- a penetration apparatus **202** disposed within the inner catheter, the apparatus having a penetrating tip and a second end that is substantially free;

- at least one fastener **208a** that is in fluid communication with the penetration apparatus (see Fig. 7, both the fastener **208a** and the penetration apparatus **202** are exposed within the same cavity);

- a sealant material **208b** that is associated with the fastener;

- wherein the penetration apparatus **202** is a hollow needle;

- wherein the sealant material **208b** occludes the gap between the outer tube **208** and membrane **10**, thus acting as a "plug" for said gap.

As to claim 18, Berg discloses the methodology comprising the steps of advancing a delivery apparatus **202**; activating the delivery apparatus to contact the surgical site (Figs. 3-8); advancing the delivery apparatus to create an aperture; and releasing a fastener **208a** via an outer catheter, wherein the fastener further comprises a sealant material **208b**.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 7, 12 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Berg et al, and in further view of US 6,726,923 to Iyer et al.

Berg is silent with regards to the sealant material being an absorbent material. However, the use of an absorbent material to reinforce an anastomotic site is well known in the art. As shown by Iyer in Figs 7-8, an absorbent sponge is provided to reinforce an anastomotic site between a graft vessel and a target vessel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Berg to include adding the reinforcement material of Iyer because it would reinforce the anastomotic site between the graft vessel and the target vessel.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1,3,5-8,10-13 and 15-19 have been considered but are moot in view of the new ground(s) of rejection.

It is noted that the rejections under the Berg reference has been modified to read element **208b** as a sealant material since the applicant does not clearly recite in the claims as to what constitutes as a "sealant material".

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darwin P. Erezzo/  
Examiner  
Art Unit 3773

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